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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, ____

No. 73-1730

ROBERT M. ROSE, M.D., DORIS D. ROSE,
Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

Petition For Writ Of Certiorari To The United States Court Of Appeals, Fifth Circuit.

ROBERT M. ROSE, M. D.
4440 Magnolia Street
New Orleans, Louisiana 70115
PRO SE

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term,

No.

Robert M. Rose, M. D.
Doris D. Rose
Petitioners

v.

Commissioner of Internal Revenue
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

Petitioner, Robert M. Rose, M.D., pro se, prays that writ of certiorari be issued pursuant to 28 U.S.C. sec. 2101(c) to review the judgment of the United States Court of Appeals for the Fifth Circuit, affirming, without hearing, the decision of the United States Tax Court on a fictitious case fabricated by the Tax Court, under guise of having been Petitioner's case before it.

OPINIONS AND ORDERS BELOW

The Decision of the United States Tax Court on a case it fabricated, under guise of my case, published as T. C. Memo 1973-1, is attached hereto as Appendix A.

The Order of the United States Court of Appeals for the Fifth Circuit denying Petitioner's motion to strike the Commissioner's Attorney's reply brief as nonresponsive to Petitioner's case since it dealt with some other case, not Petitioner's case, under guise of Petitioner's case, is attached as Appendix B.

The Opinion of the United States Court of Appeals for the Fifth Circuit, upholding the Tax Court's fabrication and decision, is attached hereto as Appendix C.

The Order of the United States Court of Appeals for the Fifth Circuit, denying Petitioner's motion for rehearing en banc is attached hereto as Appendix D.

The Order, by Judge Lewis F. Powell of the Supreme Court of the United States, extending the filing time of this petition for certiorari is attached hereto as Appendix E.

JURISDICTION

The order of the Supreme Court, extending the time to file this petition for writ of certiorari to May 27, 1974, was dated February 28, 1974. The order of the Court of Appeals, denying Petitioner's motion for rehearing en banc was dated and entered December 28, 1973. The Opinion of the Court of Appeals, affirming the decision of the Tax Court, was dated and entered November 2, 1973. The Findings, Opinion and Decision of the Tax Court were all dated January 2, 1973 and were all filed on that date.

The Jurisdiction of this Court is invoked under 28 U.S.C. sec. 2101(c) to review the Judgment and Decisions of the United States Court of Appeals for the Fifth Circuit and the Tax Court of the United States, is so well established as not to require citation.

QUESTIONS PRESENTED

1) Should a fictitious case, fabricated by a Tax Court, with its decision based thereon, published by the Court, used and cited as a precedent case, under guise of having been the case of a taxpayer before that Court, be allowed to stand?

2) Is the Tax Court practice described in number 1, above, such normal and usual Tax Court practice that the Court of Appeals was correct in upholding and perpetuating the Tax Court's fraudulent case?

3) Do taxpayers have a Constitutionally guaranteed Right to Fair Trial and Due Process in the Tax and Federal Courts, or should they be subjected to court procedures such as those described in numbers 1 and 2, above?

4) Can a case be held "moot" on the basis of prior decision in a similar or related case, when there is no court record which shows the true facts of the case or any court opinion or decision on the issue of law raised and before the court?

5) Should a course of wrong over right, initiated and upheld through the Tax and Federal Courts, be allowed to stand, or should such a course of past acts be corrected?

CONSTITUTIONAL PROVISION, STATUTE, CONGRESSIONAL EXPRESSION, AND REGULATIONS INVOLVED.

The Constitutional provision involved is the Fifth Amendment to the United States Constitution,

> "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or navel forces, or in the militia, when in actual service in

time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation." U.S. Constitution, U.S.C., 1970 Ed., Titles 1-7, Article(V), p. xlviii.

The Statute involved is sec. 213(e)(1)(A)(B) of the 1954 I.R.C., Subtitle A, Ch. 1 B., Part VII

Sec. 213(e) DEFINITIONS. - For purposes of this section.

(1) The term "medical care" means amounts paid.

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A), or

The expression of Congress' intent involved is from the Report of the Committee on Finance, U.S. Senate, to accompany H.R. 8300.

"Subsection (e) defines medical care to mean amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of diseases or for the purpose of affecting any structure or function of the body(including amounts paid for accident or health insurance), or for transportation primarily for and essential to medical care. The deduction permitted for "transportation primarily for and essential to medical care" clarifies existing law in that it specifically excludes deduction of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a patient must go to Florida in order to alleviate specific chronic ailments or to escape unfavorable climatic conditions which have proven injurious to the health of the taxpayer, and the travel is prescribed for reasons other than the general improvement of a patient's health, the cost of the patient's transportation to Florida would be deductible but not his living expenses while there. However, if a doctor prescribes an appendectomy and the taxpayer chose to go to Florida for the operation not even his transportation costs would be deductible. The subsection is not intended otherwise to change the existing definitions of medical care, to deny the cost of ordinary ambulance transportation nor to deny the cost of food and lodging provided as part of a hospital bill." (emphasis added)

The Income Tax Regulation involved is sec. 1.213-1 par. (iv)(v).

> "(iv) Expenses paid for transportation primarily for and essential to the rendition of the medical care are expenses paid for medical care. However, an amount allowable as a deduction for "transportation primarily for and essential to medical care" shall not include the cost of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a taxpayer go to a warm climate in order to alleviate a specific chronic ailment, the cost of meals and lodging while there would not be deductible. On the other hand, if the travel is undertaken merely for the general improvement of a taxpayer's health, neither the cost of transportation nor the cost of meals and lodging would be deductible. If a doctor prescribes an operation or other medical care, and the taxpayer chooses for purely personal considerations to travel to another locality (such as a resort area) for the operation or the other medicare, neither the cost of transportation nor the cost of meals and lodging (except where paid as part of a hospital bill) is deductible. (emphasis added)
>
> (v) The cost of in-patient hospital care (including the cost of meals and lodging therein) is an expenditure for medicare." ***

STATEMENT OF THE CASE

Petitioner's case presented to the Tax Court was based on the issue of law that the Commissioner of Internal Revenue had made undeniable alterations of the wording and of the meaning of Congress' expressed intent in forming his regulations (I. T. Reg. 1. 213-1 (iv)(v)) so that the regulations denied costs of food and lodging allowed by Statute (IRC sec. 213(e)(1)(A)(B)) and by Congressional Intent (Rept. Com. Fin., U. S. Sen., to acc. H. R. 8300, 1954) as medically deductible costs of the treatment of illness, from ever being medically deductible, regardless of circumstance, except when as part of the bill of any hospital, anywhere and at any time, from which billing, incidentally, such costs are completely inseparable.

Also at issue before the Tax Court was whether Petitioner's daughter's illness as it had occurred and as its treatment had been medically mandated, brought the costs of food and lodging necessary to maintain her in an environment away from her home, within the ambit of medical expenses of the treatment of illness allowed deductible by Statute, and not denied by Congressional intent, but denied by regulation.

That issue gave rise to yet another issue, i. e., whether the current judicial concept that costs of food and lodging must never be considered as medical costs and, therefore, are never deductible as expenses of the treatment of illness, as is ascribed to the Bilder

decision, is found, on close scrutiny to be not supported by fact, and a misapprehension of law that should be corrected.

This Tax Court's Findings of Fact, Opinion and Decision deal with some other case fabricated by this Tax Court, and has been published under guise of being my case. It is not my case. This Tax Court also repeated the fraudulent findings of a fictitious case concocted by a prior Tax Court, under guise of having been my case before that Court, for prior years of Suzanne's illness, which was also then published, and which was also not my case.

At calendar call, Petitioner had requested continuation of the Tax Court hearing, pending the District Court decision on frauds committed by a prior Tax Court in having fabricated a fictitious case, under guise of being Petitioner's case, which had been published and cited as precedence, (52 T.C. No. 56) which was at that time before the District Court, in suit as to the years of Suzanne's illness subsequent to the years before this second Tax Court. Petitioner's request was denied by the Tax Court.

Throughout its hearing this Tax Court evidenced gross judicial bias and animosity, consistently blocked the introduction of evidence, including copies of letters from the Commissioner's attorney's own files, in its search for truth and for fact. Blocking the introduction of evidence previously demanded, the Court summarily

closed its hearing and further evidenced its misconduct by additionally blocking the evidence from being introduced by rendering its Opinion and Decision concurrently, which is counter to Tax Court practice and the Tax Court's own Rule 50(a)

This Tax Court fitted its fraudulent facts as to Suzanne's illness for those years before the Court into the mold of Bilder (Comm. v. Bilder 369U. S. 497(1962)), disregarded the issue of law on which my case before it was based, made decision adverse to me, based on Bilder, published its "findings" and Decision (T. C. Memo 1973-1) for precedent citation.

This last Tax Court decision was appealed to the Fifth Circuit Court of Appeals (Docket No. 73-2023). The Commissioner's attorneys, in their opposition Brief, repeated the fraudulent account of Suzanne's illness fabricated by the two Tax Courts. My Motion to strike their brief as dealing with some other case, not my case before the Appeal Court was denied, the facts and issues of my case before this Appeal Court were disregarded, and the Appeal Court upheld the Tax Court. Review en banc was also denied.

It is this last upholding by the Fifth Circuit Court of Appeal of the fraudulent and illegal actions of the lower courts, that is now on petition for certiorari to this Court.

This case was before this Tax Court as the result of a peculiar course taken by the Commissioner's Attorneys. After receiving the Commissioner's 90 day letter for 1964, I petitioned the Tax Court for hearing on that year. Prior to that hearing, the Commissioner's attorneys rushed an audit of my 1965 and 1966 income tax returns and summarily issued a 90 day letter for the amounts claimed due for 1965 and 1966, together. Simultaneously, with issuance of the 90 day letter, those attorneys petitioned the Tax Court, under guise of a "Motion" for the Tax Court to include the years of 1965 and 1966 into the pending hearing before it, for 1964.

The Tax Court denied the Commissioner's attorneys' petition, which petition was, of course, illegal in the first place, for by Statute, only the taxpayer can petition Tax Court hearing.

Since, at that time, I had no way of anticipating or even suspecting the first Tax Court, for 1964, would fabricate and present a fictitious case, under guise of being my case and that I would be locked in by fraud by the second Tax Court and by the Federal Courts following the lead of the first Tax Court, I subsequently petitioned the Tax Court for hearing of the years 1965 and 1966, just before expiration of the 90 day period.

REASONS FOR THE WRIT

Writ of Certiorari should be issued in this case to correct a fictitious case, fabricated by the Tax Court, with their decision on their case, published as a precedent case for citation, T. C. Memo 1973-1, under guise of being my case, in which the Tax Court was upheld by the Fifth Circuit Court of Appeals, which decision is now before this Court for Writ of Certiorari.

This Tax Court repeated and perpetuated an identical fraud by a prior Tax Court, published as 52 T. C. No. 56, which all Courts of Appeal subsequently failed to correct.

The findings and opinions of both Tax Courts, 52 T. C. 56 and T. C. Memo 1973-1, present a completely fraudulent account of Suzanne's illness for those years before the Court that could not possibly derive from the facts testified and evidenced before those courts.

There is no question that formulating a fictitious case, making decision thereon, published for citation, is such gross violation of all Judicial and Legal rules and Ethics, that such acts formed the basis for the impeachment of Judge David Copland (Ohio, 1940), who was also disbarred. (The Finest Judges Money Can Buy, Charles Ashman, Nash Publishing, 1973, p. 134).

What began as a simple case of presenting to a Tax Court the facts of my daughter's illness and the issue of law on which my suit was based, has, because of fictions and frauds by the Tax Court and violations of its statutory rule of procedure by a Federal District Court, all consistently upheld by the Appeal Courts, snowballed into a prolonged course of continuing litigation.

This litigation continues because no court has yet made decision on the issue of law on which this case was and is based and on the true facts of this cause, even though it has been before two Tax Courts, (52 T.C. 56, T.C. Memo 1973-1) a Federal District Court, (Civil #72-165-H) the Fifth Circuit Court of Appeals on three occasions, (No. 29188, No. 72-2094, No. 73-2023) was once denied certiorari for late filing, having been "lost" in the U.S. Mail, (Oct. term 1970, No. 1377) was once denied certiorari when opposed by the Solicitor General's Brief which repeated the fictions and frauds of the Tax Courts, embelished with additional fraudulent representations of his own, (73-224).

The Courts and the Justice Department attorneys who object to the continuing of this litigation, should recognize, and it does not require citation, that litigation is not concluded until the facts and issues of a case before a court have been passed on and decided.

There is no court record of any case such as Suzanne's, having been passed on. This is a

case of first instance and the issue of law on which this case is based also has no public record of ever having been passed on by any court. The true facts and the issue of law of this case make it a landmark case, which has been concealed from the Public.

Why the continuing upholding of the Tax Court's fraud by all of the Federal Courts, in a course of continuing Public deception in which there is no court record of the true facts or the issue of law on which my case is based?

Or is it possible there is a current judicial misapprehension of law favorable to the Commissioner's purpose as to the Bilder affirmation of Congress' expressed intent, which the Commissioner's Tax Court, organized under 26 U.S.C., wishes to conceal from public knowledge, and in which they are fully supported by the Federal Courts, in example of the "Equality before the Law" which exists when the Commissioner of Internal Revenue is party to the suit, in continuing denial of my right to "fair trial and due process" as guaranteed to me by the Fifth Amendment to the United States Constitution.

If there is argument to the effect the same decision would have resulted, had the true facts and issues of my case been "found" and passed on by the Tax Courts, why, then, were the true facts ignored and by-passed and the elaborate frauds, repeatedly committed by the Tax Courts?

The issue of law before those Courts on which my case was and remains based, and which nowhere appears in the records of those or any other courts' public records, is changes the Commissioner of Internal Revenue made in the wording, in the arrangement and of the meaning of Congress' expression of its intent, when, in 1954, Congress changed IRC sec. 23(x) to IRC sec. 213(e)(1)(A)(B).

It does not require citation that the Commissioner has no right whatsoever to alter even the punctuation of Congress' expression, let alone the arrangement, wording and meaning of whole phrases, as he has done.

Why has the Commissioner made those alterations?

There is now no question that costs of food and lodging, essential to the treatment of illness were allowed deductible under predecessor IRC sec. 23(x), for this the Commissioner now freely admits, although the history of his legislation via his regulations, shows that he denied and did not allow those deductions under 23(x) even after the landmark Stringham decision affirmed the deductibility of such expenses.

The 1954 revision of the IR Code merely afforded the Commissioner opportunity to renew his legislative intents pinned, tenuously, on subsection (B), and misapplication of the Bilder decision, has given him a legal peg to fix it on, so to speak.

Although Justice Harlan stated in Bilder that Congress made it abundantly clear it did not intend costs of food and lodging to be medically deductible in connection with "travel for health", Justice Harlan certainly did not state that Congress made abundantly clear that costs of food and lodging should never be deductible as costs of the medical treatment of disease or illness, except when part of the bill of any hospital, anywhere and at any time, from which billing such costs, incidentally, are inseparable. But this is the current rule of law the Commissioner has managed to legislate, in his regulations, by his alterations and transpositions of words and whole phrases of Congress' expression of its intent.

"Travel", by definition, (Words and Phrases, Perm. Ed. 42A p. 8) means "going from place to place". Being maintained in one place, away from home for years on end, is simply not "travel" in any sense of the word, and Congress' specification in relation to "travel" simply does not apply to a situation wherein, because of medical necessity, a person must be maintained away from home for years on end, as has been the case in Suzanne's illness.

The costs of food and lodging in Bilder were denied because the facts of Bilder closely fitted the facts of the example Congress spelled out as to when costs of transportation should be allowed but costs of food and lodging denied. The facts of Suzanne's illness, as it had occurred and as it was presented to the courts, do not fit the facts of Bilder's illness and, therefore, the rule of Bilder does not apply, and, in fact, can only be applied to the court's fictitious account of her illness.

Actually, no less authority than the undersecretary of the treasury, Marion B. Folsom, stated at the enactment of IRC sec. 213(e)(1)(A)(B), in 1954, "Overall effect of proposed changes is to liberalize and extend relief in real hardship situations due to heavy medical expenses but curb deductions of ordinary or luxury living expenses in guise of medical costs" and "Nothing was said*** which would warrant its interpretation of sub-paragraph (B) as precluding allowance of living expenses incurred as a medical necessity and as a primary part of necessary medical treatment of a disease."(CIR v. Bilder, 289 F2d p. 299)

There is no basis in Statute or in Congressional intent, on which Bilder can be used to deny costs of food and lodging essential to medical care, as ever being medically deductible. It is a cruel misapplication of law against those who have suffered the penalties of severe and extreme illness, which originates from this Court and which can, and should be corrected by this Court.

My daughter's illness as it had occurred and as it had been testified and evidenced before each court, but which cannot be derived from any of the Court's public records, was that she had recurrent anoxic convulsions caused by a widespread staphylococcal bronchial infection and complicated by asthma. She was at death's door with each convulsion and all local hospitalization and other treatment failed to halt the progression of her illness. She could not survive in the New Orleans area, so was moved, the only remaining treatment after all other treatment had failed, and has since been con-

tinuously maintained in environments away from her home, that she might at first, hopefully, live and later, that she might continue to survive, for each time she was returned to New Orleans, in those years before the courts, her condition rapidly deteriorated and she had to be summarily removed from the New Orleans area. Disseminated scarring throughout her lungs, the residue of her acute illness shortens her life expentancy to age 36.

Suzanne's household menage did not move with her, as was the case in Bilder, nor was she removed for three months of each year, returning to her home in New Orleans for the remaining nine months of each year, as was the case in Bilder.

The facts of Bilder are completely different from the facts of Suzanne's case, so the rule of Bilder does not apply.

The costs of food and lodging mandated by the treatment of her illness, the only remaining treatment after all other treatment had failed,were incurred as a medical necessity and were a primary part of the medical treatment of her illness.

The deductibility of such essential medical costs are clearly allowed by predecessor IRC sec. 23(x), were re-affirmed at the 1954 revision to IRC sec. 213(e)(1)(A)(B), were not denied by Congress in its expression of intent, and any such denial by Bilder is not supported by Statute or Congressional expression of intent, is a misapprehension of law, and should be corrected.

CONCLUSION

It is clear that the guarantees of the Fifth Amendment require this Court's issuance of writ of certiorari to correct the fictions and frauds both Tax Courts have fabricated and the subsequent affirmation and upholding of those frauds by the subsequent courts, to whom correction of those frauds had been appealed.

Those frauds have been documentarily evidenced to the Federal District and Appeal Courts so repeatedly and so beyond denial, that for the Courts to perpetuate, and to continue to perpetuate, the wrongs evidenced to them, can only mean the Courts have consciously followed a policy of perpetuating a wrong in the Commissioner's favor by avoiding all consideration of right, thus establishing and maintaining a principle of wrong over right.

The writ of certiorari should also issue, to correct a misapprehension of law attributed to this Court's decision in Bilder.

Throughout this litigation the Tax Courts, the Federal Courts and Justice Department have shown visible, repeated and continued failure to meet their obligations under the law.

The Writ of Certiorari should be granted in this case on basis of this Court's own Rule 19(b), which specifies "Where a Court of Appeals*** has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

Respectfully submitted,

Robert M. Rose, M.D., Pro Se
4440 Magnolia Street, Suite #312
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Date: MAY 17 1974

APPENDIX

APPENDIX A

UNITED STATES TAX COURT
WASHINGTON

ROBERT M. ROSE and DORIS D. ROSE, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No. 2052-68

DECISION

Pursuant to the determination of this Court as set forth in its Memorandum Findings of Fact and Opinion filed January 2, 1973, it is

ORDERED and DECIDED: That there are deficiencies in income tax due from the petitioners for the taxable years 1965 and 1966 in the amounts of $1,445.91 and $1,535.40, respectively.

/s/ Charles R. Simpson

Judge

Entered: ENTERED JAN 2 1973

Form 50
Rev. Apr. 1971

APPENDIX B

U.S. COURT OF APPEALS
FILED
SEP 19 '73
EDWARD W. WADSWORTH
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 73-2023

ROBERT M. ROSE and DORIS D. ROSE,

Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

- - - - -

Appeal from the Decision of the Tax Court of the United States (LOUISIANA CASE)

- - - - -

O R D E R:

IT IS ORDERED that appellants' motion to strike appellee's brief, filed in the above styled and numbered cause, is hereby denied.

UNITED STATES CIRCUIT JUDGE

APPENDIX C

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 73-2023
Summary Calendar*

ROBERT M. ROSE and DORIS D. ROSE,
Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from a Decision of the Tax Court of the United States (Louisiana Case)

(November 2, 1973)

Before GEWIN, COLEMAN and MORGAN, Circuit Judges.

PER CURIAM: This is an appeal from the Tax Court of the United States. The appellants, Dr. and Mrs. Robert M. Rose, contend that they are entitled to medical deductions for the cost of food, lodging, and

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*Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

other living expenses of their daughter caused by seeking a climate more favorable to a serious bronchial condition. There can be no doubt that the daughter was intensely ill and that she was greatly benefitted by leaving her home in New Orleans for Arizona and Florida.

Dr. Rose, however, steadfastly declines to accept the medical non-deductibility of the cost of food, lodging, and similar living expenses while away from home under such circumstances.

We now hold, for the second time, that these expenses are not deductible. See *Rose v. Commissioner*, 435 F.2d 149 (1970), affirming *per curiam*, 52 T.C. 521 (1961), cert. denied, 402 U.S. 907 (1971).

The decision of the Tax Court is

AFFIRMED.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

APPENDIX D

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK
600 CAMP STREET
NEW ORLEANS, LA. 70130

December 28, 1973

TO ALL COUNSEL OF RECORD

No. 73-2023 - Robert M. Rose, et al v. Commissioner of Internal Revenue

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Gentlemen:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH
CLERK

By Susan B. LeBrun
Deputy Clerk

cc: Dr. Robert M. Rose
Messrs. Scott P. Crampton
Ernest J. Brown
Fred B. Ugast
Mr. Lawrence B. Gibbs

APPENDIX E

Supreme Court of the United States

No. A-311

ROBERT M. ROSE, M.D., ET UX.,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 27, 1974.

/s/ Lewis F. Powell
Associate Justice of the Supreme Court of the United States

Dated this 28th
day of February, 1974

In the Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1730

ROBERT M. ROSE AND DORIS D. ROSE, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

This case represents petitioners' second attempt[1] to challenge the disallowance of claimed medical expense deductions under Section 213 of the Internal Revenue Code of 1954 for the costs of food, lodging and other personal expenses of their daughter and of her mother petitioner Doris Rose who accompanied her, incurred in seeking a more healthful climate.

The substance of petitioners' claim (Pet. 16-18) is that the inherently personal expenses of food and lodging incurred in maintaining their daughter in Arizona and Florida were deductible medical expenses because her doctor recommended such a change in climate for her

---

[1] The Commissioner's disallowance of such claimed deductions for 1964 was upheld in *Rose* v. *Commissioner*, 52 T.C. 521, affirmed *per curiam*, 435 F.2d 149 (C.A. 5), certiorari denied, 402 U.S. 907. The present case involves the years 1966 and 1967.

serious bronchial condition. This Court, however, in *Commissioner* v. *Bilder*, 369 U.S. 499, rejected an identical claim for medical deductions. In that case, the Court upheld Treasury Regulations on Income Tax (1954 Code) (26 C.F.R.), Sec. 1.213-1(e)(iv), which provides in terms specifically appropriate to petitioners' claim, as follows—

> However, an amount allowable as a deduction for "transportation primarily for and essential to medical care" shall not include the cost of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a taxpayer go to a warm climate in order to alleviate a specific chronic ailment, the cost of meals and lodging while there would not be deductible. * * *

Petitioners also challenge (Pet. 12-15) the correctness of the decisions below on the ground that the Tax Court's findings of fact are fraudulent and fabricated. They do not, however, specifically refer to any particular finding nor do they refer to any part of the record which contradicts the Tax Court's findings. In any event, the findings of fact are actually favorable to petitioners, for there is no dispute that their daughter was "intensely ill and that she was greatly benefitted by leaving her home in New Orleans for Arizona and Florida" (Pet. App. C, p. 2). These facts, as the Court held in *Bilder*, do not change inherently personal costs for food and lodging into deductible medical expenses.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1974.

DOJ-1974-07

SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
JUL 24
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1730

ROBERT M. ROSE, M.D., DORIS D. ROSE,
Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION

ROBERT M. ROSE, M. D.
4440 Magnolia Street
New Orleans, Louisiana 70115
PRO SE

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1730

Robert M. Rose, M.D.
Doris D. Rose
Petitioners

v.

Commissioner of Internal Revenue
Respondent

REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION

Respondent had until July 9th to file a reply brief to the petition for certiorari in this case.

On July 15th, Petitioner received copies of a "Memorandum for the Respondent in Opposition", with a return receipt form dated: "Air Mail: July 12, 1974". (Appendix A). Petitioner has not been informed as to the date on which the "Memorandum" was filed with the Court. Had the "Memorandum" been filed by July 9th, Petitioner should have been notified on the date of filing. The "Memorandum" has evidently been filed out of time and,

therefore, by statute, should not be received by this Court.

Since Petitioner has not been advised of the date on which the "Memorandum" was filed, Petitioner's reply to the "Memorandum" follows.

The "Memorandum" is not a brief in reply to the petition for certiorari, as is allowed by statute. It disregards and makes no reply to the issues of fact or of law raised in the petition, and it reiterates the false and therefore fraudulent case fabricated by the Tax Courts and presented by those Courts and by the Commissioner's attorneys as Petitioner's case, when in truth and in fact, it is not Petitioner's case at all.

Suzanne and her mother were by no means "seeking a more healthful climate". Each move they made was medically prescribed and was for the climatological treatment of Suzanne's recurrent anoxic convulsions, after all other treatment had failed.

Statement in the "Memorandum", that the Tax Court's "findings of fact are actually favorable to Petitioners" and that there was "no dispute that their daughter was intensely ill" begs and seeks to divert this Court from the issue presented by this case. The degree of Suzanne's illness is not at issue. What is at issue are the medical facts of the exact nature of Suzanne's illness, which facts have been falsely and therefore fraudulently "found" by the Tax Courts; the treatment Suzanne received mandated by and medically prescribed

for that illness; and whether costs of food and lodging essential to the treatment of that illness, which expenses are allowed medically deductible by statute and are not denied by Congress' expressed intent, in illnesses such as Suzanne's, should not in fact be allowed in her case.

Such costs are denied by the Commissioner's Regulations Sec. 1. 213-1(e)(iv). It is incontestable that the Commissioner has altered the wording and the meaning of Congress' expressed intent in forming those regulations, and the regulations deny costs of food and lodging as ever being deductible medical expenses, except when part of a hospital bill. The total denial made by those regulations is not supported by statute or by Congressional statement of intent, is the issue of law to be resolved in this case.

The medical facts of Suzanne's illness are completely different from the medical facts of Bilder's illness. The total and all inclusive denial of costs of food and lodging ever being a deductible medical expense, as the Commissioner has legislated in his regulations, was not at issue in Bilder, (Com. v. Bilder, 369 U. S. 499) and was not affirmed by the Bilder decision, yet is currently attributed to that decision. Such holding is a misapprehension of law which, since it is based on this Court's Bilder decision, it can only be corrected by this Court, and should be corrected.

In the "Memorandum" is complaint that the specific errors and frauds of the Tax

Court are not set forth in the Petition. They are not set forth for the reason that the Petition for Certiorari is not a Brief. The errors and frauds of the Tax Courts are set forth where they belong, in Petitioner's Brief to the Fifth Circuit Court of Appeals. That Brief is part of the record requested transmitted to this Court under this Court's rule 21, 1.

Respondent's "Memorandum" not only may have been filed out of time, it is deceptively titled. It is not a reply brief, as allowed by statute. It is, in truth, a motion for dismissal of the petition for certiorari in this case, and should not be received by this Court, under this Court's Rule 24, 2. Additionally, Respondent's "Memorandum" fails to raise any valid factual or legal reason for continuing to deny Petitioner decision based on the true facts of his case and the issue of law on which his case is based, and particularly since decision on such basis is guaranteed to him by the "fair trial" clause of the Fifth Amendment to the United States Constitution, for which reasons the Writ of Certiorari should be issued in this case, as petitioned.

Respectfully submitted,

Robert M. Rose, M.D., Pro Se

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Date: July 22, 1974

APPENDIX

Form No. G-26a
(Rev. 9-10-65)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

ROBERT M. ROSE AND DORIS D. ROSE,
PETITIONERS

vs.

COMMISSIONER OF INTERNAL REVENUE

No. 73-1730

Service of FIVE copies of MEMORANDUM FOR THE RESPONDENT IN OPPOSITION,

is acknowledged this 15th day of July, 1974.

ROBERT M. ROSE

Air Mail: July 12, 1974
Note: Please date, sign and return this acknowledgment to:
OFFICE OF THE SOLICITOR GENERAL
Department of Justice
Washington, D. C. 20530